

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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| In re: | Chapter 11 Case No. |
| SEARS HOLDINGS CORPORATION, et al., | 18-23538 (RDD) |
| Debtors. | (Jointly Administered) |

**OBJECTION OF JOHNSON CONTROLS, INC. TO FIFTH
SUPPLEMENTAL NOTICE OF CURE COSTS AND POTENTIAL
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASES IN CONNECTION WITH GLOBAL SALE
TRANSACTION**

Johnson Controls, Inc. (“Johnson Controls” and, together with its affiliates, including, but not limited to Johnson Controls of Puerto Rico, Inc. “JCI”), hereby files this objection (the “Objection”) to the *Fifth Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Docket No. 3097] (the “Fifth Cure Notice”). In support of this Objection, JCI states as follows:

Background

1. This is a contested matter, pursuant to Bankruptcy Rules 6006(b) and 9014.
2. Jurisdiction is based upon 28 U.S.C. § 1334.
3. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).
4. On October 15, 2018 (the “Filing Date”), the Debtors filed their petition for relief under Chapter 11 of the United States Bankruptcy Code (“Bankruptcy Code”).

5. Johnson Controls is a Wisconsin corporation that provides building control systems and services to certain of the above-referenced debtors (the “Debtors”) at various locations, pursuant to certain executory contracts among others between JCI and the Debtors.

Cure Amount Objection

6. In the Fifth Cure Notice, the Debtors seek to establish a cure amount for certain executory contracts with JCI (the “JCI Contracts”), in the event the JCI Contracts are identified for assumption and assignment in connection with the Global Asset Sale Transaction¹ with the Buyer and occurrence of the Closing Date.

7. The Fifth Cure Notice lists fourteen line items related to the JCI Contracts². See Fifth Cure Notice, Ex. A at p. 11-12, line nos. 19-31.

8. Certain of the JCI Contracts were also included in the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Dkt. No. 1731], as indicated on the attached **Exhibit A**, to which JCI’s objection [Dkt. No. 1942] remains pending.

9. JCI does not object to assumption and assignment of the eight JCI Contracts identified in the Fifth Cure Notice. However, JCI objects to the proposed cure amount set forth in the Fifth Cure Notice, and assumes that where no amount was identified the proposed cure amount was \$0. Based on JCI’s records, the correct cure amount for each of the JCI Contracts is set forth below (each, a “Cure Amount”), as described more fully on the attached **Exhibit A**.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Fifth Cure Notice.

² Johnson Controls and its affiliated entities have multiple executory contracts with one or more of the Debtors that are not among those identified in the Fifth Cure Notice or in other Cure Notices filed to date. See e.g., *Objection of Johnson Controls, Inc. to Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Dkt. No. 1942]. JCI reserves all rights and remedies for all executory contracts except for those specifically addressed herein.

| Sears Contract Number | Cure Amount |
|------------------------|-----------------------|
| CW2339967 | \$301,120.00 |
| CW2339079 | \$372,453.55 |
| CW2339972 | \$109,970.00 |
| CW2267224 CW2296586 | \$1,435,089.82 |
| N/A | \$27,061.05 |
| CW2336623 | \$75,690.00 |
| CW2337561 | \$139,664.90 |
| CW2337561 | \$3,802.15 |
| TOTAL | \$2,464,851.47 |

10. The Cure Amount will be reduced by any payments received subsequent to the filing of this Objection.

11. JCI anticipates engaging in dialogue with the Debtors to come to an agreement on the Cure Amount for each of the JCI Contracts.

Cure of Default Under § 365(b)(1)(A)

12. Section 365 of the Bankruptcy Code states, in relevant part, that “(a) Except as provided in ... subsection[] (b) of this section, the [debtor-in-possession], subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor. *See* 11 U.S.C. §365(b)(1). If there has been a default in an executory contract or unexpired lease of the debtor, the [debtor-in-possession] may not assume such contract or lease unless, at the time of assumption of such contract or lease, the [debtor-in-possession]—(A) cures, or provides adequate assurance that the [debtor-in-possession] will promptly cure, such default...”.

13. “Congress’s intent in imposing these conditions on the ability of the debtor to assume the contract was to insure that the contracting parties receive the full benefit of their bargain if they are forced to continue performance.” *In re Ionosphere Clubs, Inc.*, 85 F.3d 992, 999 (2nd Cir. 1996) (citations omitted). “Where a debtor has been permitted by the bankruptcy court to assume a contract pursuant to § 365, equitable estoppel principles may be applied by the

court to deny the debtor permission to escape its obligation to perform the contract it assumed.”

Id. at 1000.

14. In order for the Debtors to assume the JCI Contracts, the Debtors must cure the existing defaults in full, which requires payment of the following Cure Amounts:

| Sears Contract Number | Cure Amount |
|------------------------------|-----------------------|
| CW2339967 | \$301,120.00 |
| CW2339079 | \$372,453.55 |
| CW2339972 | \$109,970.00 |
| CW2267224 CW2296586 | \$1,435,089.82 |
| N/A | \$27,061.05 |
| CW2336623 | \$75,690.00 |
| CW2337561 | \$139,664.90 |
| CW2337561 | \$3,802.15 |
| TOTAL | \$2,464,851.47 |

REQUEST FOR RELIEF

15. Accordingly, JCI requests that the Court deny the final relief requested in the Fifth Cure Notice as to the JCI cure amounts, and establish the Cure Amount for each of the JCI Contracts in the amounts set forth herein and on the attached Exhibit A.

WHEREFORE, JCI requests that the Court enter an order:

- A. Establishing the Cure Amount relating to the JCI Contracts as set forth herein and on the attached Exhibit A; and
- B. Providing such other and further relief as the Court deems just and appropriate.

GODFREY & KAHN, S.C.

By: /s/ Timothy F. Nixon

Timothy F. Nixon
New York State Bar No. 4436390
Attorneys for Johnson Controls, Inc.
200 South Washington Street, Suite 100
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920-432-9300

DATED: April 17, 2019

| | Sears Contract Number | Fifth Cure Notice Exhibit A Line No. | Cure Notice (Dkt. # 1731) | Debtor Counterparty(s) | Counterparty Name | Contract Title | Contract Executed Date | Contract Expiration Date | Cure Amount Identified | Corrected Cure Amount | Pre-Petition Portion of Cure Amount | Post-Petition Portion of Cure Amount | Invoices Constituting Cure Amount |
|---|------------------------|--------------------------------------|------------------------------|--|---------------------------------------|---|---|------------------------------|------------------------|-----------------------|-------------------------------------|--------------------------------------|---|
| 1 | CW2339967 | 19 20 21 | 3912 | SEARS HOLDINGS MANAGEMENT CORPORATION; SEARS, ROEBUCK AND CO., SEARS ROEBUCK DE PUERTO RICO, SEARS OPERATIONS LLC, KMART CORPORATION; KMART OPERATIONS LLC | JOHNSON CONTROLS OF PUERTO RICO, INC. | MAJOR MAINTENANCE OWNER CONTRACTOR AGREEMENT - HVAC EQUIPMENT REPLACEMENT - STORE NO. 3972 (ST. CROIX, VI), AS AMENDED; CHANGE ORDER NO. 1 (DATED 11/19/2018); CHANGE ORDER NO. 2 (DATED 2/28/2019) | 9/25/2018 9/24/2018 11/19/2018 2/28/2019 | 4/30/2019 UPON COMPLETION | \$ - | \$301,120.00 | \$0.00 | \$301,120.00 | CB10038724 \$145,280.00 CB10038725 \$166,000.00 |
| 2 | CW2339079 | 22 23 | 3910 | SEARS HOLDINGS MANAGEMENT CORPORATION; SEARS, ROEBUCK AND CO., SEARS ROEBUCK DE PUERTO RICO, SEARS OPERATIONS LLC, KMART CORPORATION; KMART OPERATIONS LLC | JOHNSON CONTROLS OF PUERTO RICO, INC. | MAJOR MAINTENANCE OWNER CONTRACTOR AGREEMENT - RTU REPLACEMENT - STORE NO. 1085 (CAGUAS, PR), AS AMENDED; CHANGE ORDER NO. 1 (DATED 11/19/2018) | 8/1/2018 8/24/2018 11/19/2018 | 4/30/2019 | \$ - | \$372,453.55 | \$0.00 | \$372,453.55 | CB10038726 \$204,568.00 CB10038726 \$167,885.55 |
| 3 | CW2339972 | 24 25 | 3911 | SEARS HOLDINGS MANAGEMENT CORPORATION; SEARS, ROEBUCK AND CO., SEARS ROEBUCK DE PUERTO RICO, SEARS OPERATIONS LLC, KMART CORPORATION; KMART OPERATIONS LLC | JOHNSON CONTROLS OF PUERTO RICO, INC. | MAJOR MAINTENANCE OWNER CONTRACTOR AGREEMENT - HVAC RTU REPLACEMENT - STORE NO. 2151 (ST. CROIX, VI); CHANGE ORDER NO. 1 (DATED 11/19/2018) | 9/25/2018 11/19/2018 | 1/30/2019 | \$ - | \$109,970.00 | \$0.00 | \$109,970.00 | CB10038723 \$56,150.00 CB10038723 \$53,820.00 |
| 4 | CW2267224 CW2296586 | 26 | 3905 3906 3907 3908 | SEARS, ROEBUCK AND CO.; KMART CORPORATION; SEARS ROEBUCK DE PUERTO RICO, INC.; SEARS LOGISTICS SERVICES, INC.; SEARS HOME IMPROVEMENT PRODUCTS, INC. | JOHNSON CONTROLS, INC. | MASTER HVAC SERVICES AGREEMENT; FIRST AMENDMENT TO MASTER HVAC SERVICES AGREEMENT (PREVENTATIVE MAINTENANCE SERVICES; REPAIR SERVICES) | 12/9/2013 (EFFECTIVE 2/1/2014); 2/1/2017 | 1/31/2020 | \$ - | \$1,435,089.82 | \$1,287,044.00 | \$148,045.82 | voluminous, spreadsheet available upon request to counsel |
| 5 | N/A | 27 | | SEARS ROEBUCK AND CO. SEARS OPERATIONS LLC KMART CORPORATION KMART OPERATIONS LLC | JOHNSON CONTROLS OF PUERTO RICO, INC. | WORK ORDER FORM - REPAIR AND REPLACE RTU'S - STORE NO. 4844 (RIO PIEDRAS, PR) | 8/3/2018 | 10/30/2018 | \$ - | \$27,061.05 | \$0.00 | \$27,061.05 | CB10038722 \$27,061.05 |
| 6 | CW2336623 | 28 29 | | SEARS HOLDINGS MANAGEMENT CORPORATION; SEARS, ROEBUCK AND CO., SEARS ROEBUCK DE PUERTO RICO, SEARS OPERATIONS LLC, KMART CORPORATION; KMART OPERATIONS LLC | JOHNSON CONTROLS OF PUERTO RICO, INC. | MAJOR MAINTENANCE AGREEMENT - RTU REPLACEMENT 24 UNITS - STORE 7413 (ST.CROIX, VI); CHANGE ORDER NO. 1 (DATED 4/11/2018) | 4/2/2018 4/11/2018 | 5/29/2018 | \$ - | \$75,690.00 | \$75,690.00 | \$0.00 | 00041712542 \$75,690.00 |
| 7 | CW2337561 | 30 | | SEARS HOLDINGS MANAGEMENT CORPORATION; SEARS, ROEBUCK AND CO., SEARS ROEBUCK DE PUERTO RICO, SEARS OPERATIONS LLC, KMART CORPORATION; KMART OPERATIONS LLC | JOHNSON CONTROLS OF PUERTO RICO, INC. | MAJOR MAINTENANCE AGREEMENT - RTU REPLACEMENT - SEARS POP-UP STORE (NO. 2085 - FAJARDO, PR) | 5/22/2018 | 6/29/2018 | \$ - | \$139,664.90 | \$139,664.90 | \$0.00 | CB10028388 \$59,161.90 CB10028389 \$80,503.00 |
| 8 | CW2337561 | 31 | | SEARS HOLDINGS MANAGEMENT CORPORATION; SEARS, ROEBUCK AND CO., SEARS ROEBUCK DE PUERTO RICO, SEARS OPERATIONS LLC, KMART CORPORATION; KMART OPERATIONS LLC | JOHNSON CONTROLS OF PUERTO RICO, INC. | CHANGE ORDER NO. 1 - MAJOR MAINTENANCE AGREEMENT - RTU REPLACEMENT - SEARS POP-UP STORE (NO. 2085 - FAJARDO, PR) - ADDITIONAL MATERIALS | | UPON COMPLETION | \$ - | \$3,802.15 | \$3,802.15 | \$0.00 | CB10032030 \$3,802.15 |
| | | | | | | | | | | \$2,464,851.47 | \$1,506,201.05 | \$958,650.42 | |

CERTIFICATE OF SERVICE

A true and correct copy of the forgoing Objection of Johnson Controls, Inc. to Fifth Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction was served on the following parties:

- a. Debtors
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